

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

16-1476

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Docket No.

Plaintiff-Appellee,

76 Cr. 1476

- against -

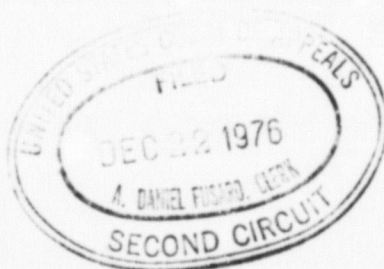
BRADLEY BRANNICK and BARBARA TIRA,

Defendants-Appellants

BP/5

APPENDIX FOR APPELLANT TIRA

HELENA PICHEL SOLLEDER, ESQ.
Assigned Counsel
19 Rector Street
New York, New York



PAGINATION AS IN ORIGINAL COPY

APPEAL

JUDGE/MAGISTRATE Assigned

U.S.

X76 CR 2692Case Filed
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Disp. Sentence

BRANICK, BRADLEY

JUVENILE

No. of Del's

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U.S. MAG. CASE NO

76 269

21-841(a)(1), 846
952(a)960(a)(1)
(2), 963
18-2OFFENSES CHARGED
Did import hashish oil
into the USA

ORIGINAL COUNTS

5

Y DATES & INTERVALS

ARREST

INDICTMENT XX

ARRANGEMENT

TRIAL

4-13-76

4/23/76

6/14/76

6/14/76

4-9-76

8/21/76

MAGISTRATE

| Search Warrant | Issued | DATE | INITIAL NO | INITIAL APPEARANCE DATE | INITIAL NO | OUTCOME |
|----------------|----------|--------|------------|-------------------------|------------|--|
| Returned | Returned | 4-7-76 | VAC/070A | 4-19-76 | | <input checked="" type="checkbox"/> HELD FOR GJ OR OTHER CEEDING IN THIS DISTRICT |
| Summons | Issued | " | " | | | <input type="checkbox"/> HELD FOR GJ OR OTHER CEEDING IN DISTRICT |
| Arrest Warrant | Issued | | | | | |
| COMPLAINT | | | | | | |

Unlawfully import hashish oil into the US from Karachi, Pakistan
T-21, Sec.952(a) and T-18, Sec. 2

U.S. Attorney or Asst.

Elia Weinbach

ATTORNEYS

John Corbett, 66 Court St.
Bklyn, NY TR 5-1975**PIERCE 1; TIRA 3**

| DATE | PROCEEDINGS |
|---------|---|
| 4-13-76 | Before BRAMWELL, J - Indictment filed |
| 4/23/76 | Before NEAHER, J.- Case called- deft and counsel present- de arraigned and enters a plea of not guilty- bail set at \$10,0 P.R.B. collateralized by deed to deft's house- bail limits e bbetween N.Y. and Tucson, Arizona- case adjd to 6/14/76 for |
| 5-21-76 | 76 M 841 inserted in CR file |
| 6-14-76 | Before NEAHER, J - case called - deft & counsel J. Corbett present - suppression hearing begun - xxxxxx suppressi of statements denied - hearing concluded - trial ordered and Begun - Jury selection begun - Trial contd to June 15, 1976. |
| 6-15-76 | Before NEAHER, J.- Case called for trial Deft and Counsel present Trial resumed Jury selected and sworn Govt opens Deft opens Trial cont'd to 6-16-76 |
| 6-16-76 | Before NEAHER, J - case called - deft & counsel present - trial contd - trial to be resumed on June 17, 1976 |
| 6-17-76 | Before NEAHER, J. - Case called. Deft & counsel present. Trial resumed. Trial continued to 6-18-76 at 10 A.M. |

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| DATE | IV. PROCEEDINGS (continued) | PAGE TWO | V. EXCLUDABLE DELAY |
|----------|--|----------------------------|--------------------------------|
| | EXHIBIT NUMBER | Interval in Days (a) | Sched. Date End Date (b) |
| 6-18-76 | Before NEAHER, J. - Case called for trial Trial resumed - deft & counsel present Deft moves for a judgment of acquittal Denied Trial cont'd to 6-21-76 | | |
| 6-21-76 | Petition for a writ of habeas corpus ad prosequendum filed. (BLANCHARD) Writ issued. | | |
| 6-21-76 | Voucher for expert services filed | | |
| 6-21-76 | Before NEAHER, J - case called - deft & counsel present - trial resumed - deft moves for Judgment of acquittal - denied - Jury renders a verdict of guilty as to deft Branick on counts 1, 2, 3, 4 and 5; guilty as to counts 1, 4 and 5 as to deft TERA. Bail contd - sentence adjd without date - trial concluded - Jury discharged - motions reserved. | | |
| 6-22-76 | Govts requests to charge filed. | | |
| 7/23/76 | Notice of motion to set aside the verdict of guilty, filed. Returnable 8/16/76. | | |
| 10/8/76 | Before NEAHER, J. - Case called. Deft & Counsel present. Deft motion to set aside the verdict - denied. Deft after being convicted by jury is sentenced to : 2 years imprisonment with a special parole term of 5 years on each of counts 1,2,3,4 and 5 to be concurrent. Deft informed of right to appeal. Execution of sentence stayed pending appeal. Bail contd pending appeal provided that deft remains in contact with the Pre Trial Services Agency. Clerk directed to file Notice of Appeal. Financial Affidavit filed. | | |
| 10/8/76 | Judgment & Commitment filed. Certified copies to Marshals and probatbn. | | |
| 10/8/76 | Notice of Appeal filed. | | |
| 10/8/76 | Docket entries and duplicate of notice of appeal mailed to the C of A. | | |
| 10/18/76 | Record on appeal certified and mailed to the Court of Appeals. | | |
| 10-21-76 | Acknowledgment received from the court of appeals for receipt of record on appeal. | | |
| 10-28-76 | Voucher for compensation for counsel with Memorandum from J. Neaher (approving attorney's fee) sent to Court of Appeals for authorization of counsel's fee. | | |
| 11-15-76 | Voucher for compensation - filed. | | |
| 11-15-76 | 4 transcripts filed (dated June 14, 15, 16 and 18, 1976 respectively) | | |
| 11-16-76 | Stenographers transcript filed dated June 17, 1976 | | |
| 12/2/76 | Stenographers transcript dated 6/21/76 filed. | | |
| 12-9-76 | By Neaher, J - Order filed stipulated by and between the parties that 3 ex. marked as follows (see Order) should be part of the record on appeal etc. | | |
| 12/13/76 | Two envelopes ordered sealed by Judge Neaher filed and placed in vault. | | |
| 12/13/76 | Court exhibit 2 filed. | | |
| | EXHIBIT NUMBER | DATE | FILE NUMBER |
| | EXHIBIT NUMBER | DATE | C.D. NUMBER |

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REALDEMANDOR: Min
FELONY: Fel

JUDGE/MAGISTRATE Assigned: U.S.

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0719

District Office

Disp/Sentence

76 CR 263**TIRA, BARBARA**

(LAST FIRST MIDDLE)

JUVENILE

4 13

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269

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U.S. TITLE/SECTION
**21-841(a)(1)846,
952(a)960(a)(1)(2)
963,
18-2**

OFFENSES CHARGED

**Importation of hashish oil
into the USA**ORIGINAL COUNTS **5****CLOSED****II. KEY DATES & INTERVALS**

| ARREST | INDICTMENT | ARRAIGNMENT | TRIAL | SENTENCE |
|--------------------|----------------|-------------|---------|----------|
| U.S. Custody Began | High Bail Date | Information | | |
| Summons Served | Indictment | | | |
| First Appearance | In Charge | | | |
| | District | | | |
| | 4-13-76 | 4/23/76 | 6/14/76 | 6/14/76 |
| | | | 6/14/76 | 6/14/76 |

| MAGISTRATE | | OUTCOME |
|-----------------------|--------|-------------------------|
| Search | DATE | INITIAL NO |
| Warrant | Return | INITIAL APPEARANCE DATE |
| Summons | Issued | PRELIMINARY EXAMINATION |
| Arrest Warrant Issued | Served | OR |
| COMPLAINT | | RECEIVED HEARING |
| OFFENSE | | WAIVED |
| (In Complaint) | | NOT WAIVED |
| | | INTERVENING INDICTMENT |
| | | Type Number |

U.S. Attorney or Asst.

Elia Weinbach

ATTORNEYS

**Helena Pichel Solleder
19 Rector Street
N.Y 10005
BO9-2222**

* Show last names and suffix numbers of other defendants on same indictment information

PIERCE 1; BRANICK 2

| DATE | PROCEEDINGS |
|---------|--|
| 4-13-76 | Before BRAMWELL, J - Indictment filed |
| 4/23/76 | Before NEAHER, J.- Case called- deft waves reading of indictment and enters a plea of not guilty- bail set at \$5,000.00 surety or 10% cash- bail limits extended to cover state of Ca.-case adjd to 6/14/76 for trial |
| 4/23/76 | By NEAHER, J.- Order appointing counsel filed |
| 6-14-76 | Before NEAHER, J - case called - deft & counsel Helena Solleder present - suppression hearing begun - denied - hearing concluded - trial ordered and begun - trial contd to June 15, 1976. |
| 6-15-76 | Before NEAHER, J.- Case called for trial Deft and Counsel present Trial resumed Jury selected and sworn Govt opens Deft opens Trial cont'd to 6-16-76 |
| 6-16-76 | Before NEAHER, J - case called - deft & counsel present - trial resumed - trial contd to June 17, 1976 |
| 6-17-76 | Before NEAHER, J. - Case called. Deft & counsel present. Trial resumed. Trial continued to 6-18-76 at 10 A.M. |

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| DATE | IV. PROCEEDINGS (continued) | V. EXCLUDABLE DELAY | | | |
|----------|---|-------------------------|------------------------------|-------------|----------------------|
| | | Initial Entry (A) | Statutory End Date (B) | Code (C) | Total Days (D) |
| 6-18-76 | Before NEAHER, J. - Case called for trial Deft & counsel present Trial resumed Deft moves for a judgment of acquittal and denied Trial cont'd to 6-21-76 | | | | |
| 6-21-76 | Petition for a writ of habeas corpus ad prosequendum filed (BLANCHARD) Writ issued. | | | | |
| 6-21-76 | Voucher for expert services filed | | | | |
| 5-21-76 | Before NEAHER, J - case called - deft & atty present - trial resumed - deft moves to dismiss the indictment etc. motion denied - Jury returns with a verdict of guilty as to deft TIRA on counts 1, 4 and 5 ; not guilty as to counts 2 and 3. Sentence adj'd without date - bail contd - trial concluded - jury discharged - motions reserved. | | | | |
| 6-22-76 | Govts requests to charge filed | | | | |
| 7/23/76 | Notice of motion to set aside the verdict og guilty , returnable 8/16/76 filed. | | | | |
| 9/23/76 | Governments memorandum of law in opposition to defts motion to set aside the guilty verdicts filed and forwarded to chambers as requested. | | | | |
| 0-8-76 | Before Neaheer, J - case called - deft TIRA & counsel H. Solleder present - Defts motion to set aside JURY verdict is denied - deft is sentenced to imprisonment for one year concurrent as to counts 1, 4 & 5 plus 2 yrs. special parole term and 5 years probation. Deft informed of right to appeal. Clrk directed to file Notice on behalf of the deft - bail contd pending appeal. Probationary term to begin forthwith. CJA 23 executed (Financial affidavit) | | | | |
| 10-8-76 | Judgment and commitment and order of probation filed. Certified copies to Marshal & Probation. | | | | |
| 10-8-76 | Notice of appeal filed (no fee) | | | | |
| " | Docket entries and duplicate of Notice mailed to the court of appeals | | | | |
| 11-16-76 | Stenographers transcript filed dated June 17, 1976 | | | | |
| 12-2-76 | CJA Voucher forwarded to the court of appeals for approval | | | | |
| 12/2/76 | Stenograhpers transcript dated 6/21/76 filed. | | | | |
| 2-9-76 | NY Neaheer, J - Order filed stipulated by and between the parties that 3 exhibits marked as follows (see Order) should be part of the record on appeal etc. | | | | |
| 12/13/76 | XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Two envelopes ordered sealed by Junc. Neaheer filed and placed in vault. | | | | |
| 12/13/76 | Court exhibit 2 filed. | | | | |

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TRP:
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EASTERN DISTRICT OF NEW YORK

F. #761,489

UNITED STATES OF AMERICA

- against -

JEFF PIERCE,
BRADLEY BRANICK and
BARBARA TIRA,

Defendants.

Cr. No.

(T. 21, U.S.C., §§841(a)(1),
846, 952(a), 960(a)(1),
960(a)(2) and 963 and T. 18,
U.S.C., §2)FILED
U.S. DISTRICT COURT E.D. N.Y.

APR 13 1976

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 4th day of April 1976 and the 8th day of April 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants JEFF PIERCE, BRADLEY BRANICK, and BARBARA TIRA did knowingly, wilfully and unlawfully conspire to import quantities of hashish oil, a Schedule I controlled substance in violation of Title 21, §952(a), §955, §960(a)(1) and §960(a)(2). (Title 21, United States Code, Section 963).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant JEFF PIERCE committed the following.

OVERT ACT

1. On or about the 4th day of April 1976 the defendant JEFF PIERCE flew from Pakistan to John F. Kennedy Airport, Queens, New York.

COUNT TWO

On or about the 4th day of April 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants JEFF PIERCE, BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally import into the United States from Pakistan a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1) and Title 18, United States Code, Section 2).

- 2 -
COUNT THREE

On or about the 4th day of April 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants JEFF PIERCE, BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 8th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally import into the United States from Pakistan a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1) and Title 18, United States Code, Section 2).

COUNT FIVE

On or about the 8th day of April 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants BRADLEY BRANICK and BARBARA TIRA did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule I controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

A TRUE BILL.

Joseph M. O'Malley
FOREMAN.

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
Plaintiff,
-against- : 76-CR-269
BRADLEY BRANICK and BARBARA TIRA,
Defendants. :

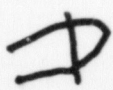
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United States Courthouse
Brooklyn, New York

June 21, 1976
10:00 o'clock A.M.

Before :
HONORABLE EDWARD NEAHER, U.S.D.J.

RAYMOND STALKER
ACTING OFFICIAL COURT REPORTER



1 749

2 Appearances:

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DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

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BY: ELIA WEINBACH, ESQ.
Assistant U.S. Attorney

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J. C. CORBETT, ESQ.
Attorney for Defendant Branick

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HELENA SOLLEDER, ESQ.
Attorney for Defendant Tira

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THE COURT'S CHARGE

THE COURT: Members of the jury, we are now at the stage of the trial where you are about to undertake your final function as jurors. Your duty is a serious and important one. In performing it you actively share with the Court the responsibility of administering justice according to law and the evidence in the case.

Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality and, as was emphasized by me when you were selected as jurors, without bias or prejudice for or against the Government or the defendants as parties to this controversy. The case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community. Obviously it is equally important to the defendants who are charged with a serious crime and have the right to receive a fundamentally fair trial. The community has an interest in that too.

Let me add, the fact that the Government is a party entitles it to no greater consideration than accorded to any other party to a litigation. By the same token it is entitled to no less consideration. All parties, Government and individuals alike stand as equals before the bar of justice.

THE COURT'S CHARGE

Your final role is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence, you appraise the credibility of the witnesses. You draw the reasonable inferences from the evidence. You resolve such conflicts as there may be in the evidence. I shall later refer to how you determine credibility of witnesses.

My final function is to instruct you as to the law. It is your duty to accept these instructions as to the law and to apply them to the facts as you may find them. With respect to any fact matter, it is your recollection and yours alone that governs. As I have already told you anything that counsel, either for the Government or the defense may have said with respect to the matters in evidence, whether during the trial, in a question, in an argument or in summation is not to be substituted for your own recollection of the evidence; so too anything the Court may have said during the trial or may have referred to during the course of these instructions as to any matter in evidence is not to be taken in lieu of your own recollection.

There are certain principles of law which apply in every criminal case and to which I made reference

THE COURT'S CHARGE

and emphasized at the time of your selection as jurors. I repeat them now. The indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt. Each defendant on trial has pleaded not guilty. Thus the Government has the burden of proving the charges against each defendant beyond a reasonable doubt. They do not have to prove their innocence.

On the contrary they are presumed to be innocent of the accusations contained in the indictment. This presumption of innocence was in their favor at the start of the trial, continued in their favor throughout the trial, is in their favor even as I instruct you now and remains in their favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of each defendant beyond a reasonable doubt. The question that naturally comes up is what is a reasonable doubt. The words almost define themselves.

That there is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable

THE COURT'S CHARGE

doubt is a doubt which appeals to your reason, your judgment, your common sense and your experience. It is not caprice, whim, speculation, conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If after a fair and impartial consideration of all the evidence you can confidently and honestly say you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of his guilt, in sum, if you have such a doubt as would cause you as a prudent person to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt and in that circumstance it is your duty to acquit.

On the other hand, if after such an impartial and fair consideration of all the evidence you can confidently and honestly say you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and under such circumstances it is your duty to convict.

One final word on this subject: reasonable doubt does not mean a positive certainty or beyond all possible

THE COURT'S CHARGE

doubt. If that were the rule, few persons however guilty they might be would be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt. Not beyond all possible doubt. I might add further that the requirement of proof beyond a reasonable doubt operates on the whole case and not on the separate bits of evidence. Each individual item of evidence need not be proven beyond a reasonable doubt.

Now, let us turn to the charges against the defendants on trial. The defendants Bradley Branick and Barbara Tira are charged in Count One of the indictment with conspiring to import quantities of a controlled substance. Namely, hashish oil, in violation of certain provisions of Title 21, United States Code. Now, I am going to read Count One to you or reread it.

It states that, "On or about and between the 4th day of April, 1976. and the 8th day of April, 1976, both dates being approximate and inclusive, within the

THE COURT'S CHARGE

Eastern District of New York, the defendants -- it refers to the defendant Jeff Pierce, Bradley Branick and Barbara Tira, did knowingly and wilfully and unlawfully conspire to import quantities of hashish oil, a Schedule One controlled substance in violation of Title 21, 1952 (a) and certain other sections of that Title."

Then it goes on to say, "In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant Jeffrey Pierce committed the following overt acts.

"One, on or about the 4th day of April, 1976, the defendant Jeffrey Pierce, flew from Pakistan to John F. Kennedy Airport, Queens, New York."

Now, one of the sections referred to in that count is Title 21, Section 952 (a) and that Federal statute provides and I quote, "It shall be unlawful to import into the customs territory of the United States from any place outside thereof, but within the United States, any controlled substance."

Section 960 provides in substance, "Any person who 1, contrary to Section 952, the statute I just read, knowingly or intentionally imports a controlled substance, shall be punished as provided in Subsection (b) of this Section.

THE COURT'S CHARGE

Now, the Congressional purpose expressed in the Federal Drug Act, as I shall abbreviate it, was to prevent traffic in or improper use of drugs having a substantial and detrimental effect on the health and general welfare of the American people. Now, Section 963 of the Drug Act refers to Count One of the indictment. It reads in pertinent part as follows: "Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment, fine or both."

The word import as used in the Drug Act means any bringing in or introduction of a controlled substance into this country. The word customs territory of the United States simply means all of the United States which includes the District of Columbia and the District of Puerto Rico.

Four essential elements are required to be proved by the Government, beyond a reasonable doubt, in order to establish the guilt of the defendants of conspiring to import a controlled substance into the United States as charged in Count One of the indictment.

First, that the conspiracy described in the indictment was knowingly and wilfully formed by two or more persons and was executed at or about the time

THE COURT'S CHARGE

alleged. Second, that the defendant whose guilt or innocence you are considering knowingly and wilfully became a member of the conspiracy. Third, that the objective of the conspiracy was to commit an unlawful act, that is bring into the United States a controlled substance prohibited by law. Fourth, that at least one of the persons involved committed one of the overt acts, that is knowingly did something in furtherance of the conspiracy.

The indictment as I have said, charges that the conspiracy began on or about April 4, 1976, and continued to on or about April 8 1976. The exact dates are not critical. If you find beyond a reasonable doubt that the conspiracy charge existed at any time during that period, that is sufficient.

Now, what is a conspiracy? A conspiracy is simply a combination of two or more persons, by concerted action, to accomplish some unlawful purpose or to accomplish some lawful purpose by an unlawful means. So, a conspiracy is referred to as a kind of partnership in criminal purposes, in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey or disregard the law.

THE COURT'S CHARGE

Mere similarity of conduct amongst various persons, however, and the fact they may have associated with each other and may have assembled and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. However, the evidence in the case need not show that the members entered into any expressed or formal agreement: or that they directly by word, spoken or in writing, stated between themselves what their objective or purpose was to be or the details thereof or the means by which the objective or purpose was to be accomplished. What the evidence in the case must show, beyond a reasonable doubt, in order to establish proof that the conspiracy existed is that the members in some way or manner or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

In this case, as I have told you, Count One of the indictment charges a conspiracy was formed amongst Jeff Pierce, who is named as a defendant in the indictment, but is not here on trial, and the defendants Bradley Branick and Barbara Tira who are on trial. A person cannot conspire with himself. Then, therefore, you cannot find any of the defendants on trial guilty of

THE COURT'S CHARGE

the charge in Count One unless you find, beyond a reasonable doubt, that one or both of them participated in the conspiracy as charged with Jeff Pierce. In that connection, the fact that Jeff Pierce testified that he plead guilty to Count One, the conspiracy count, may not be considered by you as proof of the existence of the conspiracy charge or that either of the defendants were members of it. A conspiracy comes to an end when all the alleged co-conspirators have been arrested.

A statement made by one of them after the conspiracy is over is not binding upon any person charged with membership. You are to give no weight whatsoever to Mr. Pierce's plea of guilty, either with respect to the existence of a conspiracy as alleged or the guilt of the defendants on trial. Furthermore, as I have said, a person cannot conspire with himself and therefore you cannot find either of the defendants guilty unless you find beyond a reasonable doubt that one or both of them participated in a conspiracy with Mr. Pierce, based upon the evidence as to their statements and conduct.

This brings us to the second element of whether one or both of the defendants on trial was or became a member of the conspiracy charged in Count One. One may

THE COURT'S CHARGE

become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of the conspiracy, but happens to act in a way which furthers some object or purpose of a conspiracy, does not thereby become a conspirator. Before the jury may find that a defendant or any other person has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or another person who is claimed to have been a member, wilfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

Now, that instruction has used the word knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason. To act or participate wilfully means to act or participate voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done: that is to say, to act or participate with the bad purpose, either to disobey or disregard the law.

So, if the defendant, having the understanding of

THE COURT'S CHARGE

the unlawful character of the plan, knowingly encourages, advises or assists for the purpose of furthering the undertaking or the scheme, he thereby becomes a wilful participant, a conspirator. One who wilfully joins in an existing conspiracy and is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, you should consider the actions and declarations of all of the alleged participants, including Jeffrey Pierce. However, in determining whether a particular defendant was a member of a conspiracy, if any, you should consider only his or her acts and statements. A defendant cannot be bound by the acts or declarations of another participant unless it is established that a conspiracy existed and that he was one of its members. Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed and that a defendant was one of its members, then the statements thereafter knowingly made and the acts thereafter knowingly done by the other person, likewise found to be a member, may be considered by the jury as evidence in the case as to the defendants found to have been a member, even though the statement and the act may have occurred in

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the absence and without knowledge of the other defendant; provided such statements and acts were knowingly made and done during the continuance of such conspiracy and in furtherance of some object of the conspiracy.

Otherwise, any admission or incriminatory statement made or done outside of court by any one person may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done. Therefore, statements of any conspirator which are not in furtherance of a conspiracy or made before its existence, or after its termination, may be considered as evidence only against the person making them.

In the consideration of the evidence in the case, as to the offense of conspiracy charged, you should first determine whether or not the conspiracy existed as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not the accused defendant wilfully became a member of a conspiracy. If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed and that a defendant wilfully became a member of the conspiracy, either at its inception or afterwards,

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then there may be a conviction, even if the conspirators may not have successfully accomplished any common object and or purpose and in fact may have failed to do something. Any defendant's participation moreover is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator, even though he may have played only a minor part in the conspiracy.

This brings us to the third essential element namely, whether the object of the conspiracy was to bring into the United States a prohibited controlled substance. If you find, beyond a reasonable doubt, that the substance contained in the several plastic bags admitted into evidence as Government's exhibits is in fact hashish oil. then I instruct you as a matter of law that that substance would be a controlled substance within the meaning of the Drug Act, the importation of which is prohibited by law.

This brings us to the fourth element, the commission of an overt act in furtherance of a conspiracy charged. You will recall as I said before that the indictment in Count One alleges as an overt act that on or about April 4, 1976, Jeffrey Pierce flew from Pakistan to John F. Kennedy Airport, Queens, New York. Although the gist of the offense of the conspiracy is

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the unlawful agreement between two or more individuals, nonetheless you will have to find beyond a reasonable doubt that Jeff Pierce's travelling from Pakistan to New York was in furtherance of an existing conspiracy and not an unrelated individual act. To sum up with respect to Count One, as the evidence stands in this case, in order to find a conspiracy you must find, beyond a reasonable doubt, that one or both of the defendants on trial and Jeff Pierce, the third alleged co-conspirator, wilfully conspired or agreed that one or more of them would import hash oil into the United States concealed in such a manner as to evade discovery by the customs authority. If you do not find that there was such an agreement or understanding, then you cannot find that a conspiracy existed.

Whether a defendant knowingly or intentionally participated presents an issue of fact. Proof of requisite knowledge and intent on the part of an alleged conspirator need not be made by direct evidence. By direct evidence is meant the testimony of a person who claims to have knowledge derived through the senses: for example, an eyewitness. The existence of a conspiracy and the defendant's participation in it may be shown by circumstantial evidence: by which we mean the existence

2 of facts and circumstances from which the existence of
3 other facts and circumstances may reasonably be inferred.
4 As I have said, explicit words are not required to
5 indicate an association or attachment to a conspiracy.
6 The essence of the conspiracy is the common plan or
7 design.

8 In determining whether there was an unlawful
9 agreement, you may judge the acts and conduct of the
10 alleged co-conspirators which are done to carry out an
11 apparent criminal purpose. These include discussions
12 and conversations among themselves to that end. If
13 you find circumstances of secrecy, or attempts to conceal
14 the true nature of the transactions, these may be
15 considered by you as circumstantial evidence of a
16 criminal intent.

17 However, mere association of a defendant with
18 co-conspirator or conspirators does not establish
19 participation in a conspiracy if you find one did exist.
20 Nor is knowledge of the illegal acts of others sufficient.
21 Thus, the mere existence or association or friendship
22 between a defendant and an alleged co-conspirator
23 by itself would not be sufficient to establish that
24 defendant's participation in the conspiracy. Likewise,
25 as I said before, if one acts in a way which furthers
the conspiracy, but has no knowledge of it, he does not

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thereby become a participant. What is necessary, as I already said, is that the defendant must participate in the conspiracy with knowledge of at least some of its purposes and with the intent to aid in the accomplishment of its unlawful purpose. A single act may be enough to draw a defendant within the ambit of a conspiracy, provided you are convinced beyond a reasonable doubt that the defendant knew of the conspiracy and associated himself with it.

Now, let us turn to Count Two of the indictment, which charges the defendants on trial with knowingly and intentionally importing into the United States from Pakistan, a quantity of hashish oil, in violation of the Federal Drug Act. Now, let me read Count Two "Count Two charges on or about the 4th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants Jeffrey Pierce, Bradley Branick and Barbara Tira did knowingly and intentionally import into the United States from Pakistan a quantity of hashish oil, a Schedule One controlled substance, and certain sections of the United States Code are therein referred to. Before either of the defendants on trial may be convicted on the charge of importing in Count Two of the indictment, the Government must establish beyond a reasonable doubt the

following two essential elements:

First, that on or about April 4, 1976, a quantity of hashish oil was brought into the United States concealed on the person or effects of Jeff Pierce. Second, that a defendant on trial knew that the hashish oil was being illegally imported by Pierce and that said defendant knowingly and intentionally aided and abetted its importation.

I've already explained the meaning of importation to you and that to act knowingly is to do so voluntarily and intentionally and not because of mistake, accident or other innocent reason. I've also explained that to act intentionally means to do so with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done that is to act or participate with the bad purpose either to disobey or disregard the law.

There is evidence in this case that on April 4, 1976, hashish oil was found in a suitcase carried by Jeffrey Pierce who arrived alone from Pakistan on that date. You may wonder why the defendants on trial are also charged with that offense. The answer to that question is found in another United States criminal statute known as the Aiding and Abetting Statute, on

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which the Government relies in charging the defendants on trial under Count Two.

That Statute, Section 2 of Title 18, United States Code, reads as follows; "Whoever commits an offense against the United States or aid, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

B, whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States is punishable as a principal."

Under the foregoing statute it is not necessary for the Government to show that a defendant personally committed the crime charged. A person who aids and abets another person to commit an offense is just as guilty of the offense as if he himself committed every act related to it. Accordingly, you may find a defendant on trial guilty of the substantive offenses of importing if you find beyond a reasonable doubt, as the Government charges, that Jeff Pierce committed the offense and that a particular defendant aided and abetted him.

In order to find that a defendant aided and abetted, you must be satisfied, beyond a reasonable doubt, that that defendant in some way knowingly

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associated himself or herself with the criminal venture in a meaningful way. That he or she knowingly participated in it as something he or she wished to bring about and by some action to make it succeed.

In other words, if one, fully aware of what he is doing plays a significant role in furthering a transaction prohibited by law, he is an aider and abettor, and as such he is equally guilty with the person who directly performed the illegal acts which constitute the crime. One final word on the subject of aiding and abetting -- the mere presence of a defendant at a place where the crime may have been committed or planned or where events which may be part of a conspiracy may have transpired, is not a sufficient basis to find that such a defendant aided and abetted in the commission of a crime or knowingly participated in the conspiracy and intended to further its aims.

The law requires proof beyond a reasonable doubt that a defendant knowingly played a part as an aider and abettor. Mere knowledge or association does not make out an offense of aiding or abetting.

Now, let us turn to the third count in the indictment which charges the defendants on trial with knowingly and intentionally possessing, with intent to

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1 distribute, a quantity of hashish oil at John F.
2 Kennedy International Airport on April 4, 1976. Count
3 Three, which I shall read to you, charges, "That on or
4 about the 4th day of April, 1976, at John F. Kennedy
5 International Airport, within the Eastern District of
6 New York, the defendants Jeffrey Pierce, Bradley Branick
7 and Barbara Tira did knowingly and intentionally possess
8 with intent to distribute a quantity of hashish oil,
9 a Schedule One Controlled Substance in violation of the
10 law" and there are listed certain statutory references.
11 Now, before either of the defendants on trial may be
12 convicted of a charge of possession in Count Three,
13 the Government must establish, beyond a reasonable
14 doubt, the following essential elements.
15

16 First, that on or about April 4, 1976, Jeffrey
17 Pierce had in his possession, knowingly and intentionally,
18 a quantity of hashish oil with intent to distribute it.
19 Second, that one or both of the defendants on trial
20 knowingly and intentionally aided and abetted Jeffrey
21 Pierce in that possession with such intent. Again, as
22 in the case of the charge in Count Two of the indict-
23 ment, if the evidence tends to show it was Jeff Pierce
24 who alone arrived at John F. Kennedy Airport on
25 April 4, 1976, with a quantity of hashish oil concealed

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in the suitcase, again, the Government relies on the aiding and abetting statute in charging the two defendants on trial with possession of that quantity of hashish oil with intent to distribute it.

The same aiding and abetting statute applies to the charge in Count Three as I've explained to you with respect to Count Two. However, there are ~~some~~ terms which warrant explanation. The term possession has two meanings: Actual and constructive. Possession is actual when a person has a thing in his manual or physical control. Possession is constructive when a person, although not having an article in his possession, nevertheless has the power to control its disposition; that is by directing its transfer to someone else, setting a price for the sale and so forth.

The term intent to distribute simply means having the intention of transferring or selling the hashish oil at some point to someone else.

Again, you will have to decide whether either or both of the defendants on trial knowingly and intentionally aided and abetted Jeffrey Pierce in his possession of the hashish oil on April 4, 1976, with intent to distribute it. If so, then under ~~and~~ the aiding and abetting statute, one or both of the defendants on

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2 trial may be found guilty as a principal if you are
3 satisfied by the proof, beyond a reasonable doubt.

4 Now, let us turn to Count Four of the indictment
5 which charges the defendants on trial with knowingly
6 and intentionally importing into the United States, from
7 Pakistan, a quantity of hashish oil, on or about April 3,
8 1976.

9 Now, Count Four, which I will read to you charges
10 that, "On or about the 3th day of April, 1976, at John
11 F. Kennedy International Airport, within the Eastern
12 District of New York, the defendants Bradley Branick and
13 Barbara Tira did knowingly and intentionally import into
14 the United States from Pakistan, a quantity of hashish
15 oil, A Schedule One Controlled Substance." Again, there
16 are statutory references.

17 Now, before either defendant may be convicted on
18 the charge 1 Count Four, the Government must establish,
19 beyond a reasonable doubt, the following essential
20 elements: first, that on or about April 3, 1976, at
21 John F. Kennedy International Airport, a quantity of
22 hashish oil was brought into the United States, concealed
23 in the suitcase carried by the defendant Barbara Tira.
24 Second, that one or both of the defendants on trial
25 knowingly and intentionally participated in bringing

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about the importation of that hashish oil.

The same principles and definitions already explained apply to Count Four also. I will therefore turn immediately to Count Five which charges the defendants on trial with knowingly and intentionally possessing a quantity of hashish oil, with intent to distribute it on or about April 8, 1976.

Now, Count Five reads that: "On or about the 8th day of April, 1976, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants Bradley Branick and Barbara Tira did knowingly and intentionally possess with intent to distribute a quantity of hashish oil, a Schedule One Controlled Substance." Again, there are statutory references. Again, the same principles and definitions that are applicable to Count Three apply to Count Five.

Now, before you may find, incidentally, either defendant guilty of possession of the hashish oil, you must find that the defendant had knowledge of its presence. That the defendant you are considering exercised some form of dominion and control over it and intended to exercise such control.

A defendant may be proven guilty, as I said before, by either direct or circumstantial evidence.

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2 The law makes no distinction as to the weight to be
3 given to either direct or circumstantial evidence.
4 Circumstantial evidence, if believed, is of no less
5 value than direct evidence: for in either case you must be
6 convinced, beyond a reasonable doubt, of the guilt of
7 a defendant. In this case the Government relies upon
8 both ~~the~~ direct and circumstantial evidence.

9 Now, in this case it is obvious that as to all
10 four counts, other than the first count of conspiracy,
11 the critical question is whether the defendants on
12 trial knew that the substance in both suitcases or one
13 or both suitcases was hashish oil. That element of
14 actual knowledge that either Jeffrey Pierce or Barbara
15 Tira was bringing and importing that substance into the
16 United States is an essential element of each of the
17 offenses charged, both as to importing and as to posses-
18 sion.

19 You may not find either defendant guilty of any
20 count unless you find, beyond a reasonable doubt, that
21 he or she knew the hashish oil was being imported into
22 the country. The fact of knowledge as I have indicated
23 may be established by direct or circumstantial evidence,
24 just as any other fact in the case.

25 Knowledge may be proven by a defendant's conduct,

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since we have no way of looking into a person's mind directly. Here the defendant Tira by her not guilty plea has in effect denied knowledge of the hashish oil allegedly found in her suitcase.

Now, in this connection, bear in mind one may not wilfully and intentionally remain ignorant of facts, important and material to his conduct in order to escape the consequences of the criminal law. If you find from all the evidence, beyond a reasonable doubt, that the defendant Tira deliberately and consciously tried to avoid learning that there was such a substance in the suitcase she was carrying, in order to be able to say when she was apprehended that she did not know, you may treat this deliberate avoidance of positive knowledge as equivalent knowledge.

In other words, you may find the defendant acted knowingly if you find that either she actually knew she had hashish oil or that she deliberately closed her eyes to what she had every reason to believe was the fact.

I should like to emphasize again, members of the jury, the requisite knowledge cannot be established by mere negligence or even foolishness on the part of a defendant.

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2 Now, during the course of the trial the Court
3 permitted evidence of certain claimed prior similar
4 acts to be introduced. At that time I pointed out to
5 you that the defendants were not on trial for what was
6 alleged to have been done and claimed to have been done
7 in 1972 or in 1973. This indictment pertains solely
8 to claimed criminal conduct occurring in 1976.

9 So, evidence that an act was done at one time
10 or on one occasion is not any evidence or proof whatever
11 that a similar act was done at another time or and
12 another occasion: that is to say that a defendant may
13 have committed an earlier act of a like nature may not
14 be considered by you in determining whether the accused
15 committed any act charged in the indictment. Nor may
16 evidence of an alleged earlier act of like nature be
17 considered for any other purpose, whatever, unless you
18 the Jury first find that the other evidence in the
19 case, standing alone, establishes, beyond a reasonable
20 doubt, that the accused did the particular act or acts
21 charged in a particular count of the indictment. Then,
22 after deliberation, if you should find beyond a reasonable
23 doubt that from the other evidence in the case that the
24 accused did the acts charged in the particular count
25 under deliberation, then you may consider evidence as

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to alleged earlier acts of a like nature in determining the state of mind or intent with which the accused did the act in the particular count.

Where proof of an alleged earlier act is established by evidence which is clear and convincing, you may, but are not obliged to draw the inferences and find that in doing the act charged in the count under deliberation the accused acted wilfully and with specific intent and not because of mistake or accident or other innocent reason.

In this case, in addition to the evidence regarding prior or similar acts that I have just mentioned, the Government introduced through its witnesses evidence of claimed statements made by the defendants following their arrest. Evidence relating to any statement or act or admission claimed to have been made or done by the defendant outside of court and after a crime has been committed should always be considered with caution and weighed with great care and all such evidence should be disregarded entirely unless the evidence in the case convinces you beyond a reasonable doubt, that the statement or act or admission is knowingly made or done.

As I have said before, an act is done or an

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omission is performed knowingly if it is done voluntarily and intentionally and not because of mistake, accident or other innocent reason. In determining whether any statement or act or omission, claimed to have been made by a defendant outside of court and after a crime was committed, was knowingly made or done, you may take into consideration the age, sex, training, education, occupation and physical and mental condition of the defendant and the treatment given the defendant while in custody or while under interrogation as shown by the evidence in the case and also all other circumstances in evidence surrounding the making the statement or act or omission, including whether, if the statement or act or omission was made or done, the defendant knew or had been told and understood that he or she was not under an obligation or required to make the statement or to do some act claimed to have been made or done by him or her, that any statement, act or omission which might be made, which will be used against a defendant in the court, the defendant is entitled to assistance of counsel before making any statement, either orally or in writing and that if the defendant is without money or means to retain counsel of his own choice, an attorney would be appointed to

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2 advise and represent the defendant, free of cost or
3 obligation.

4 If the evidence in the case does not convince
5 you, beyond a reasonable doubt, that the admissions or
6 confession was made intentionally and voluntarily, you
7 should disregard it entirely. On the other hand, if
8 the evidence in the case does show, beyond a reasonable
9 doubt, that an admission or confession was in fact
10 voluntary and intentionally made by a defendant, you
11 may consider it as evidence in the case against the
12 defendant who made it.

13 It must be apparent to you that the Government
14 and defense are in sharp divergence and critical issues
15 of fact and credibility are raised. You are called
16 upon to decide the facts in issue here. How do you
17 decide this?

18 Now, I think you understand why at the start of
19 the trial I suggested it would be desirable and impor-
20 tant for you not only to listen, but to look at the
21 witnesses as they testified. Your determination of the
22 issue of credibility very largely must depend upon the
23 impression that a witness made upon you as to whether
24 or not he was telling the truth or giving you an
25 accurate version of what occurred. I often say to

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Jurors when you walk into the courtroom and sit in the jury box, while the trial is going on and later when you are deliberating in the jury room, you bring with you your common sense, good judgment and your experience with you. You decide whether or not a witness was straightforward and truthful: whether he attempted to conceal anything: whether he has a motive to testify falsely: whether there is any reason why he might color his testimony.

In other words, what you try to do, to use the vernacular, is to size a person up just as you would do, as I said before, in any important matter where you were undertaking to determine whether or not a person is truthful, candid and straightforward.

In passing upon the credibility of a witness, you may also take into account inconsistencies or contradictions as to material matters in his own testimony, or any conflict with that of another witness.

A witness, however, may be inaccurate, contradictory or even untruthful in some respects, and yet be entirely credible in the essentials of his testimony.

The ultimate question for you to decide in passing upon credibility is: did the witness tell the truth here before you as to essential matters.

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Aside from the general considerations regarding the evaluation of testimony I have just mentioned, there are some special witness instructions required in this case.

As you are aware the Government contends that through the testimony of a witness, Jeff Pierce, it has in addition to circumstantial evidence offered direct proof of conspiracy. Mr. Pierce is named in the indictment as one of the co-conspirators. By his own admission on the stand he must be regarded as an accomplice in the offense with which the defendants are on trial are charged.

An accomplice is one who wilfully associates himself with the commission of a crime. The law does not prohibit the use of accomplice testimony and whether you approve or disapprove of its use should not enter into your consideration of the case. In certain types of cases the Government is, of necessity, frequently compelled to rely upon the testimony of an accomplice. Otherwise it would be difficult to detect or prosecute some wrongdoers and that is particularly true with conspiracy cases.

Often the Government has no choice in the matter. It must take witnesses to the transactions as they

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are. There is no requirement in the Federal Court that the testimony of an accomplice be corroborated. A conviction may rest on the uncorroborated testimony of such a witness, if he is found credible and reliable. However, the testimony ~~however~~ of such a witness should be viewed with great caution and scrutinized very carefully. Nevertheless it does not follow, because a person has acted or been a participant in a crime or is an accomplice ~~in that~~ he's not capable of giving a truthful version of what occurred. You should ask yourselves these questions:

Did Ferce give false testimony or color his testimony contrary to fact because he has not been prosecuted on the remaining charges in the indictment or believes that his cooperation may result in more lenient treatment. If you find his testimony was deliberately untruthful, you should unhesitatingly reject it. On the other hand, if upon after a cautious and careful examination you are satisfied he has given a truthful version of the essential events, beyond a reasonable doubt, there is no reason why you should not accept it.

You also heard in this case the testimony of Robert Henderson, a Government chemist concerning the

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nature of the substance in the plastic bags admitted into evidence as Government's Exhibits. The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses. Witnesses, who by knowledge, skill, training or education have become expert in some art, science, profession, or vocation may state an opinion as to relevant and material matters in which they profess to be experts and may also state the reason for the opinion.

You may consider the expert opinion received in evidence that the substance in the bags is hashish oil and give it such weight as you may think it deserves. If you should decide that the opinion of Mr. Henderson is not based upon sufficient knowledge, skill, experience, training or education, or if you should conclude that the reasons given in support of the opinion are not sound or that, the opinion is outweighed by other evidence, then you may disregard the opinion entirely. If you decide that the opinion of Mr. Henderson is based upon sufficient knowledge, skill, experience, training or education and the reasons given in support of the opinion are sound, then you may credit his testimony concerning the nature of the substance which the

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Government contends is the hashish oil found in the suitcase in evidence and referred to in the indictment.

The fact that some of the Government witnesses, I think probably only one of the Government witnesses, in this case was a Government employee or police officer does not entitle his testimony to any greater weight or consideration than afforded to any other witness in the case. There were either one or two customs officers and they are in the same equivalent role. You evaluate their credibility the same way you do that of any other witness. If you find that any witness and that applies alike to Government and defense, wilfully testified falsely as to any material fact you have a right to reject the testimony of that witness in its entirety. You may accept that part or portion which commends itself to your belief as credible.

Now, the law permits but does not require a defendant to testify in his own behalf. The defendant Bradley Branick has taken the witness stand. Obviously he has a deep personal interest in the results of his prosecution.

Interest creates a motive for false testimony and in appraising his credibility you may take that into account. However, it by no means follows that simply because a person has a valid interest in the

end result that he is not capable of telling a truthful, candid and straightforward story. It is up to you to decide whether the defendant's interest has affected or colored his testimony.

The defendant Barbara Tira has not testified in this case. That is her absolute right and in no respect may be considered by you as any evidence against her or as a basis for any presumption or inference unfavorable to her. You must not permit that fact to weigh in the slightest degree against her, nor should it enter into your deliberations or discussions.

The evidence in the case consists of testimony of all witnesses except that which I have instructed you to disregard and all exhibits received in evidence. All evidence, whether or not I have referred to it in these instructions or counsel have mentioned it in their summations is important and must be considered by you. If per chance any reference to testimony that is not in agreement with your recollection, and I have stated this before, you are to disregard such references and I emphasize this as strongly as I can. Always it is your recollection and yours alone that governs and you must unhesitatingly reject any statement as to a fact, whether made by the Court or counsel which does not coincide

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with your own recollection of the evidence.

Bear in mind that the guilt or innocence of the defendants on trial must be determined solely upon the evidence presented against them or the lack of evidence. You must remember, as I have said, that each defendant is entitled to have your consideration as though he or she were alone on trial.

Now, where two or more persons are charged with the commission of a crime, the guilt of one defendant may be established without proof that all of the defendants perpetrated every act constituted in the offenses charged. Now, the jury must give separate consideration, as I have said, to each individual defendant and to each separate charge against him or her. Each defendant is entitled to have his case determined from his own conduct and from the evidence that may be applicable to him. During the course of the trial the attorneys at various times have objected to certain questions and moved to strike answers and have taken other procedural positions before you. These are matters of technical procedure that are the proper concern of attorneys and should not concern you. I instruct you are not to draw any inference from the fact that an attorney may have made objections and motions before you during the trial.

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The Government in order to prevail must prove the essential elements of the crime to the required degree of proof as already explained in these instructions. If it's successful your verdict should be guilty. If it fails it should be not guilty. The case of each defendant must be considered separately as if he or she were alone on trial.

Thus the possible verdicts you may find are each defendant not guilty, you may find each defendant guilty or you may find one not guilty and the other guilty as the case may be.

However, to find one defendant guilty of conspiracy, you must find that he was engaged in the conspiracy with at least one other person, either on trial or named as a co-conspirator, since as I have told you a conspiracy requires an agreement or understanding between at least two persons. The verdict in each instance must be unanimous. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and these instructions.

Under your oath as Jurors as I have mentioned previously, you cannot allow consideration of the sentence which may be imposed upon a defendant if he is

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convicted to enter into your deliberations or to influence your verdict in any way.

Your duty is to decide the case solely and only upon the evidence and in the event of a conviction the duty of imposing sentence rests solely with the Court.

Each Juror is entitled to his or her own opinion, but each should, however, exchange views with his fellow Jurors.

That is the very purpose of jury deliberation, to discuss and to consider the evidence; to listen to the arguments of fellow Jurors:

To present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

Each one of you must decide the case for himself and herself after consideration with his or her fellow Jurors.

But you should not hesitate to change an opinion which, after discussion with your fellow Jurors, appears to be erroneous.

However, if after carefully considering all the evidence, and the arguments of your fellow Jurors, you entertain a conscientious view that differs from others,

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2 you are not to yield to your judgment simply because
3 you are outnumbered or outweighed.

4 Your final verdict must reflect your conscientious
5 view as to how the issue should be decided. The
6 charge here, as I have said, is a serious one. The
7 just determination of this case is important to the
8 public; it is equally important to these defendants.

9 Under your oath as Jurors you must decide the
10 case without fear or favor and solely, as I have stated
11 any number of times, in accordance with the evidence and
12 the law.

13 If the Government has failed to carry its burden
14 as to a defendant, your sworn duty is to acquit. If it
15 has carried its burden as to a defendant, you must not
16 refrain from your sworn duty, you must convict.

17 Now, members of the Jury, to sort of simplify
18 your task, because there are two defendants and five
19 counts, I prepared a special form of verdict in which
20 each count is briefly summarized and the defendant's
21 name under each and the words guilty or not guilty,
22 which you may follow as your outline during your deli-
23 berations.

24 I am going to hand the original to the Foreman,
25 Juror Number One, and I have extra copies for each one of

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you to have in the jury room. There will be twelve copies to go with the original.

I am going to let you retire for a moment while I give counsel the opportunity to inform me, out of your presence, whether I've misspoken anything in the course of these instructions or omitted anything that should have been spoken. Then I'll turn these papers over to you, you may have a copy of the indictment with you in the jury room. I'll give that to the Foreman also.

Now, while I think of it, many exhibits have been admitted here. There is much testimony recorded by the reporters. My suggestion is that when you begin your deliberations, you try to determine amongst yourselves, perhaps following this outline, count by count and if there are any issues that are trouble to you and you feel it is important and that it may be resolved perhaps by seeing an exhibit or if necessary by having some testimony reread. Remember, in requesting testimony it would be preferable not to ask for the whole testimony of someone to be reread, but just that particular portion which may satisfy some particular question that has come up.

The same with respect to any exhibit in evidence.

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2 They are all in evidence here and we're not trying to
3 keep them from you. It's important in an effort to
4 have you focus on your deliberations, on specific
5 matters and take them one at a time.

6 Now, the way you communicate with the Court, you
7 will be provided with a pad and pencil. You write a
8 note in which if you have a question, write it out and
9 if you have some other communication, write that out.
10 You hand it to the Marshal, knock on the door and he'll
11 give it to the Court. We will convene and counsel will
12 confer about the response to be made to your inquiry.
13 So, you will take a five-minute recess while I speak
14 to counsel.

15 (Jury excused.)

16 MR. WEINBACH: I have no objection at all to the
17 charge. I just want to ask the Court, I take it you
18 are amenable if the Jury could be kept at least until
19 a reasonable hour?

20 THE COURT: I will. It may be that we'll send
21 them out to get something to eat and have them come
22 back. Now, I have to go to a meeting of the judges at
23 5:00 o'clock. That usually lasts for an hour. So, I
24 hope they won't come in with questions during that time.
25 One can't guarantee that. Do we have any left over, I

want to give copies to counsel.

MS. SOLLEDER: Your Honor, you did charge they don't have to find both defendants guilty and I would request that you charge the Government must establish every element of the crime --

THE COURT: That's been said at least five times. I said it with respect to each count. The Government must establish the essential elements beyond a reasonable doubt.

MS. SOLLEDER: But that language might confuse them.

THE COURT: I don't think it will. An item of evidence is not the same thing as essential elements.

MS. SOLLEDER: Your Honor, I thought as I listened to the accomplice charge pretty carefully, but I didn't see in there the part that I had in mind about the personal stake would lead a witness to ensure the defendant be convicted in order to gain --

THE COURT: Well, I did say that. You must ask yourselves these questions.

MS. SOLLEDER: It didn't sound as forceful as mine.

THE COURT: Did Pierce give false testimony or color his testimony contrary to fact because he's not

1
2 been prosecuted on the remaining charges or he believes
3 that his cooperation may result in more lenient treat-
4 ment.

5 MS. SOLLEDER: Your Honor, such a personal stake
6 may lead a witness to ensure that a defendant is
7 convicted because he may believe that acquittal may
8 deprive him of a reward promised him in return for his
9 testimony and that was evidenced by the Second Circuit
10 decision in United States versus Pagent. It's my
11 Request Number One, your Honor. It's more forceful than
12 your language.

13 MR. WEINBACH: Your Honor, I would just say that
14 the language, there is no way on earth that any witness
15 can ensure that a defendant is convicted.

16 MS. SOLLEDER: Second Circuit approved it.

17 MR. WEINBACH: I would be very much surprised.

18 MS. SOLLEDER: I wouldn't have put the citation
19 in there.

20 THE COURT: I see what you mean. It's the last
21 sentence. That comes out of Pagent?

22 MS. SOLLEDER: Yes.

23 THE COURT: Is that the language in there?

24 MS. SOLLEDER: I'm quite sure.

25 THE COURT: Do you have the slip opinion?

2 MS. SOLLEDER: I thought I did. I don't see it.

3 THE COURT: It's 432, F. Second. Maybe I don't
4 remember, because that was one of my cases as a U.S.
5 Attorney.

6 MS. SOLLEDER: Your Honor, with respect to that
7 Pre-Trial Services issue, I have suffered the conse-
8 quences. Mr. Weinbach got up and said the bond would
9 not be revoked until he failed to appear. However, Ms.
10 Bracken had said she was requesting the Court to termi-
11 nate probation, supervision by the Pre-Trial Services
12 in which case the Court might have had to get a cash
13 requirement from this man.

14 I think the Pre-Trial Services is a little
15 different situation --

16 THE COURT: It's a good try, Mrs. Solleder. I
17 think we're rather far from home. Because, it's one
18 thing for Pre-Trial Services to call that to the
19 attention of the Court. I don't think the Court would
20 be apt to act without first having a hearing to deter-
21 mine why he was behaving the way he did. My recollection
22 is that there is evidence he kept in touch with the DEA
23 agents and if that were brought to the attention of the
24 Court, certainly he did appear and I don't think it
25 would get you anywhere.

MS. SOLLEDER: I must have gotten this out of another slip opinion.

THE COURT: Section 432, F. Second 701.

THE CLERK: I don't see anything about the charge in the case.

THE COURT: That's 704.

LAW CLERK: The language is here but it's in reference to a conviction wide latitude and cross-examination and accomplice --

THE COURT: It had to do with a person on cross-examination, an opportunity to go into illegal activity. It really didn't deal with the charge. The court held it to be unsubstantial error to restrict cross-examination aimed at uncovering prior misconduct and that showing lenient treatment by the Government officials prior to prosecution and you were given great leeway in trying to get Mr. Pierce to admit he received all kinds of favors.

MS. SOLLEDER: The only other request I would ask is the last one, Number Six. The defendants' contention is that the witness Pierce testified because he did, which is a contention, I did have a copy of it. I gave it to the Clerk.

THE COURT: You have another one but I don't have the citation.

2 MS. SOLLEDER: That's a slip opinion.

3 THE COURT: Have you got it here?

4 MS. SOLLEDER: I must have had these at one
5 time, your Honor.

6 THE COURT: Well, I believe that I sufficiently
7 covered the substance of Request One and Six when the
8 charge was given.

9 MS. SOLLEDER: Thank you, your Honor.

10 MR. CORBETT: No exception to your Honor's
11 charge.

12 THE COURT: Tell them they may begin their
13 deliberations.

14 THE CLERK: You have to excuse the Alternates
15 and swear the Marshals.

16 THE COURT: Bring them out.

17 (Jury enters box ,

18 THE COURT: Swear in the Marshals.

19 (Whereupon, the Marshals were sworn to keep the
20 Jury.)

21 THE COURT: All right, the Marshals have the
22 copies I mentioned. You may begin your deliberations.
23 We settled other matters so you may start. The Alter-
24 nates must leave. The twelve of you go ahead. The
25 Alternates are excused at this time.

(Whereupon, the Jury started their deliberations at 4:30 p.m.)

(Whereupon, the court recessed.)

(Whereupon, the court resumed.)

(Time noted 4:50 p.m.)

(Jury not present.)

THE COURT: Now, I've received a note marked Court Exhibit 7 requesting Agent Trustey's report which is not in evidence. So, therefore, I suppose what we'll have to say is I can respond to that by simply advising the Jury by a note that Agent Trustey's report is not in evidence and therefore do they wish to hear any of the testimony of Agent Trustey.

MR. CORBETT: I think that would be sufficient to respond by a note. It isn't in evidence and it's not available to them.

MS. SOLLEDER: I don't think that would be sufficient.

THE COURT: I want them brought in. Then they could say what they're interested in hearing. I think perhaps I agree with, Ms. Solleder. Because I did stress that I'd like them to focus on something particular. So, now they had just gotten their coffee. Tell them to come out for a minute. I don't want the coffee to

2 get cold.

3 Now, shall I ask them whether they plan to stay
4 in view of their latest request?

5 MR. CORBETT: Judge, far be it for me to
6 recommend to the Court, if they wish to, not to go to
7 dinner and leave earlier or something.

8 (Whereupon, the Jury returned from their delibe-
9 rations at 4:50 p.m.)

10 THE COURT: I'm not going to let your coffee get
11 cold, members of the Jury. But I did bring you in
12 because of your latest note asking for Agent Trustey's
13 report. That report is not in evidence.

14 Now, the question may be do you wish to have
15 some particular portion of his testimony read back to
16 you? Is there some controversy over what his testimony
17 was on a given point? You don't have to answer now.
18 Do you want to go back and consider it for a moment?

19 JUROR NUMBER FIVE: I would like the testimony
20 read back concerning the initial arrest of Barbara Tira
21 and her initial statements.

22 THE COURT: Do we have the reporter here? We
23 will have to get him. Is it your desire that while you
24 are deliberating that you do not go to dinner, that you
25 have dinner in the jury room?

(Whereupon, the Jury responded in the affirmative.)

THE COURT: Okay, fine. We'll call you back shortly and have it reread.

(Short recess.)

(Whereupon, the court resumed.)

(Time noted, 6:05 p.m.)

(Jury returns from their deliberations.)

THE COURT: Just to make sure that we've gotten what it is that you want, we found that portion of the testimony of Agent Trustey after he went to the customs room where Miss Tira was taken and so forth. Will you read it?

(Whereupon, the court reporter read back the testimony of Agent Trustey taken on June 17, 1976, starting at page line , and ending at page line .)

THE COURT: You've heard the statements made at the time of her arrest. There are some additional statements after she was brought the next day to the courthouse. Are you interested in those or does this cover what you wanted to know?

JUROR NUMBER FOUR: That covers the original question we had.

2 THE COURT: All right, then do you wish to
3 resume your deliberations?

4 JUROR NUMBER FOUR: We want something. We would
5 like your instructions again on aiding and abetting.

6 THE COURT: All right. It isn't necessary for
7 me to read the law I quoted, you don't want the law?

8 JUROR NUMBER FOUR: Yes, we do.

9 THE COURT: You want the quotation from the
10 statute? That's what I mean? Well, here let me read
11 it to you. Section 2 of Title 18 says, "Whoever commits
12 an offense against the United States or aids, abetts,
13 counsels, commands, induces or procures its commission
14 is punishable as a principal.

15 "B, whoever will cause an act to be done if
16 directly performed by him or another, would be an
17 offense against the United States, is punishable as a
18 principal."

19 I said, I instructed you under the foregoing
20 statute it is not necessary for the Government to show
21 that the defendant personally committed the crime
22 charged. A person who aids and abetts another person
23 to commit an offense is just as guilty of the offense
24 as if he himself committed every act related to it:
25 accordingly, you may find the defendant on trial guilty

2 of the substantive offenses if you find, beyond a
3 reasonable doubt, as the Government charges that Jeff
4 Pierce committed the offense and that a particular
5 defendant aided and abetted him.

6 In order to find that a defendant aided and
7 abetted, you must be satisfied, beyond a reasonable
8 doubt, that that defendant in some way knowingly
9 associated himself or herself with the criminal venture
10 in a meaningful way. That he or she knowingly parti-
11 cipated in it as something he or she wished to bring
12 about and by some action to make it succeed.

13 In other words, if one is fully aware of what
14 he is doing, plays a significant role in furthering a
15 transaction prohibited by law, he is an aider and
16 abettor and is equally guilty as he who directly per-
17 forms an illegal act which constitutes the crime.

18 One final word on the subject of aiding and
19 abetting. The mere presence of a defendant at the
20 place where the crime may have been committed or planned
21 or where events which may be a part of the conspiracy
22 that has transpired is not a sufficient basis to find
23 such a defendant aided and abetted the commission of a
24 crime or knowingly participated in the conspiracy and
25 further attempted to make it successful. The law requires

proof beyond a reasonable doubt that a defendant knowingly played a part as an aider and abettor. Mere knowledge or association does not make out an offense of aiding and abetting.

Now, do you wish to resume your deliberations?

(Whereupon, the Jury was excused at 6:15 p.m. to continue their deliberations.)

(Whereupon, the court recessed.)

(Whereupon, the court resumed.)

(Time noted, 7:45 p.m.)

(Jury not present.)

THE COURT: Jury notes marked Court Exhibit 8 and 9.

(Whereupon, the court recessed.)

(Whereupon, the court resumed.)

(Time noted, 7:55 p.m.)

THE CLERK: Jury note marked Court Exhibit 10.

(Whereupon, the court recessed.)

(Whereupon, the court resumed.)

(Time noted, 8:20 p.m.)

(Jury not present.)

THE COURT: I guess we better bring them in. Is the reporter ready to read? Bring in the Jury.

(Whereupon, the Jury returned from their

2 deliberations at 3:20 p.m.)

3 THE COURT: Good evening, members of the Jury:
4 for your information it's still daylight outside.
5 Now, taking up your note number 6, you would like Mr.
6 Pierce's testimony read back and we finally managed
7 to locate it through the reporter and he is prepared
8 to start. Now, you want that portion which applies to
9 the various suitcases that would be used on the flights
10 back to the United States in April, 1976. You have
11 that part, go ahead and read it.

12 (Whereupon, the court reporter read back the
13 direct testimony of Jeffrey Pierce starting at page
14 line , and ending at page line .)

15 THE COURT: Do you have the cross-examination?

16 (Whereupon, the court reporter read back the
17 cross-examination of Jeffrey Pierce starting at page
18 line , and ending at page line .)

19 THE COURT: That's it, Mr. Reporter. All right,
20 now members of the Jury, I have your note that we have
21 marked as Court Exhibit 10 that says you would like to
22 be charged again regarding aiding and abetting. Do
23 you want me to start again reading the statute, I thought
24 you might know that by now, Section 2 of Title 18, United
25 States Code. It states, "Whoever commits an offense

2 against the United States or aids, abetts, counsels,
3 commands, induces or procures its commission is
4 punishable as a principal."

5 Subdivision B, "Whoever wilfully causes an act
6 to be done, which if directly performed by him or
7 another would be an offense against the United States,
8 is punishable as a principal."

9 Under the foregoing statute it is not necessary
10 for the Government to show that the defendant personally
11 committed the crime charged. A person who aids and
12 abetts another person to commit an offense is just as
13 guilty of the offense as if he himself committed every
14 act related to it. Accordingly, you may find the
15 defendant on trial guilty of substantive if you find
16 beyond a reasonable doubt, as the Government charges
17 that Jeff Pierce committed the offense and that a
18 particular defendant aided and abetted him.

19 In order to find that a defendant aided and
20 abetted, you must be satisfied beyond a reasonable
21 doubt that that defendant in some way knowingly associated
22 himself or herself with a criminal venture in a meaning-
23 ful way. That he or she knowingly participated in it
24 as something he or she wished to bring about and by some
25 action wished to make it succeed.

1
2 In other words, if one is fully aware of what
3 he is doing, plays a significant role in furthering a
4 transaction prohibited by law, he is an aider and
5 abettor. As such, he is equally guilty as the person
6 who directly performed the illegal acts which constitute
7 the crime.

8 One final word on the subject of aiding and
9 abetting. The mere presence of a defendant where the
10 crime occurred or events which may be part of a conspi-
11 racy may have transpired is not a sufficient basis to
12 find that such a defendant aided and abetted the
13 commission of a crime or knowingly participated in the
14 conspiracy and intended to further its aims.

15 The law required proof, beyond a reasonable
16 doubt, that a defendant knowingly played a part as an
17 aider and abettor. Mere knowledge or association does
18 not make out the offense of aiding and abetting.

19 MR. WEINBACH: Your Honor, may we approach the
20 side bar for one second?

21 (Side bar.)

22 MR. WEINBACH: Your Honor, on the aiding and
23 abetting, I know that you use Jeff Pierce as an example
24 that they had aided and abetted Jeff Pierce. I don't
25 know if in your previous charge in Counts Four and Five

RE-CHARGE BY THE COURT

there is aiding and abetting one another with respect to the April 8, 1976 matter.

THE COURT: I'll make that clear for them.

(Following occurred in open court.)

THE COURT: To overcome any possible confusion in your mind, you may recall that I did not repeat the aiding and abetting charge or instruction, I should call it, as given it to you here, simply because I pointed out when we came to the other counts dealing with the events on April 8, 1976, the same principles would apply there. That is you will recall in this instruction I said the suitcase carried by Jeff Pierce, because I was then talking about Count Two of the indictment which charges Jeffrey Pierce with having brought in the suitcase, imported it, in other words, on April 4, 1976. Count Four and Five deals with the events on April 3, 1976 and aiding and abetting applied to those counts as well. Do you understand that? You follow me? There seems to be someone with a doubtful look?

FOREMAN: Will you say that again?

THE COURT: I'm saying you remember that you are guided by the special form of verdict. Count One is the conspiracy count. Count Two is importing a quantity of hashish oil on or about April 4, 1976. That is the

RE-CHARGE BY THE COURT

suitcase that Mr. Pierce carried in. Count Three is possessing on that same date. The same hashish oil in the same suitcase that Jeff Pierce carried.

Count Four is importing a quantity of hashish oil on or about April 8, 1976. That was the second arrival, the arrival in which defendants Branick and Tira came through customs. Do you understand that, aiding and abetting applies to that count and also to the possession of April 8, 1976. It applies right through. Do you follow me? You still seem to have a question written on your face, if not in your mind. Let me put it this way.

If you were satisfied from the evidence, this is just a hypothesis, I'm not suggesting that the evidence shows it, but if you were to find from the evidence that when Miss Tira came in with a bag, on April 8, 1976, containing the second portion of the hashish oil, let's put it that way, and if you also found, again hypothetically, that the defendant Branick had something to do with that mode of bringing it in, utilizing another person to carry it in, if he were the one who induced that person or commanded her or aided her, in other words, bringing it about, he could be an aider and abettor if there is evidence indicating he

RE-CHARGE BY THE COURT

2 knowingly participated in it. Do you understand?

3 That's what I mean when I say aiding and abetting applies.

4 Similarly, if you turn it around, if the evidence
5 satisfies you that Branick was an actor or participant
6 in whatever it was, in the negotiations, procuring this
7 hashish oil and utilized Miss Tira to carry it in, she
8 could be an aider and abettor to the importation, as I
9 say, if you are satisfied, provided you found that she
10 knowingly and wilfully participated in that, even though
11 she wasn't a principal. But, she simply agreed, she
12 would have it in her suitcase and bring it in.

13 Do you understand that? That's what I'm trying
14 to make clear. But, it is up to you to find out whether
15 the evidence established those relationships beyond a
16 reasonable doubt.

17 Now, are you ready to return and resume your
18 deliberations?

19 MS. SOLLEDER: May we approach the side bar
20 before the Jury goes out?

21 (Side-bar.)

22 MS. SOLLEDER: It seems to me in view of the
23 example you gave, a similar example should be given with
24 respect to Pierce.

25 THE COURT: Pierce is of course not on trial.

2 That's the problem.

3 MS. SOLLEDER: But they're charged with aiding
4 and abetting him four days before.

5 THE COURT: I'm assuming they understand that.
6 They are the persons on trial. I wanted to make it
7 clear to the Jury, there seems to be a question on one
8 of their faces, at least one Juror, as related to the
9 other counts. That's what I was trying to clear up.
10 If there's any confusion in their minds I want it clear
11 that they understand.

12 MR. CORBETT: Does your Honor plan to stay for
13 a verdict?

14 THE COURT: I'm going to let them return and
15 deliberate. We will wait and see.

16 (Following occurred in open court.)

17 THE COURT: All right, members of the Jury, you
18 may return to your deliberations.

19 (Whereupon, the Jury returned to their delibera-
20 tions at 6:40 p.m.)

21 THE CLERK: Jury note, marked Court Exhibit 11.

22 (Whereupon, the court recessed.)

23 (Whereupon, the court resumed.)

24 (Time noted, 6:50 p.m.)

25 (Jury not present.)

2 THE COURT: The Jury has sent in a note announcing
3 that they have reached a verdict. Bring in the Jury.

4 THE CLERK: Jury note marked Court Exhibit 12.

5 (Whereupon, the Jury returned from their delibe-
6 rations at 8:50 p.m.)

7 THE COURT: Mr. Foreman and members of the Jury,
8 the Court has received your note. I'm going to ask our
9 Clerk to direct the usual questions to the Foreman.

10 THE CLERK: Mr. Foreman, can you please rise:
11 Mr. Foreman, ladies and gentlemen of the Jury, have you
12 agreed upon a verdict?

13 MR. FOREMAN: Yes, we have.

14 THE CLERK: How do you find the defendant
15 Bradley Branick as to Count One, guilty or not guilty?

16 MR. FOREMAN: Guilty.

17 THE CLERK: How do you find the defendant
18 Barbara Tira as to Count One?

19 MR. FOREMAN: Guilty.

20 THE CLERK: How do you find the defendant
21 Bradley Branick as to Count Two, guilty or not guilty?

22 MR. FOREMAN: Guilty.

23 THE CLERK: How do you find the defendant
24 Barbara Tira as to Count Two, guilty or not guilty?

25 MR. FOREMAN: Not guilty.

2 THE CLERK: How do you find the defendant
3 Bradley Branick as to Count Three, guilty or not guilty?

4 MR. FOREMAN: Guilty.

5 THE CLERK: How do you find the defendant
6 Barbara Tira as to Count Three, guilty or not guilty?

7 MR. FOREMAN: Not guilty.

8 THE CLERK: How do you find the defendant
9 Bradley Branick as to Count Four, guilty or not guilty?

MR. FOREMAN: Guilty.

11 THE CLERK: How do you find the defendant
12 Barbara Tira as to Count Four, guilty or not guilty?

13 MR. FOREMAN: Guilty.

14 THE CLERK: How do you find the defendant
15 Bradley Branick as to Count Five, guilty or not guilty?

16 MR. FOREMAN: Guilty.

17 THE CLERK: How do you find the defendant
18 Barbara Tira as to Count Five, guilty or not guilty?

19 MR. FOREMAN: Guilty.

20 THE COURT: You may be seated, Mr. Foreman.

21 MR. CORBETT: May I have the Jury polled?

22 THE COURT: Poll the Jury, Mr. Clerk.

23 THE CLERK: Mr. Foreman, is that your verdict?

24 MR. FOREMAN: Yes.

25 THE CLERK: Juror Number Two?

2 JUROR NUMBER TWO: Yes.

3 THE CLERK: Juror Number Three?

4 JUROR NUMBER THREE: Yes.

5 THE CLERK: Juror Number Four, is that your
6 verdict?

7 JUROR NUMBER FOUR: Yes.

8 THE CLERK: Juror Number Five, is that your
9 verdict?

10 JUROR NUMBER FIVE: Yes.

11 THE CLERK: Juror Number Six, is that your
12 verdict?

13 JUROR NUMBER SIX: Yes.

14 THE CLERK: Juror Number Seven, is that your
15 verdict?

16 JUROR NUMBER SEVEN: Yes.

17 THE CLERK: Juror Number Eight, is that your
18 verdict?

19 JUROR NUMBER EIGHT: Yes.

20 THE CLERK: Juror Number Nine, is that your
21 verdict?

22 JUROR NUMBER NINE: Yes.

23 THE CLERK: Juror Number Ten, is that your
24 verdict?

25 JUROR NUMBER TEN: Yes.

THE CLERK: Juror Number eleven, is that your verdict?

JUROR NUMBER ELEVEN: Yes.

THE CLERK: Juror Number Twelve, is that your verdict?

JUROR NUMBER TWELVE: Yes.

THE CLERK: And so say you all.

(Whereupon, the Jury responded in the affirmative.)

THE CLERK: Jury has been polled, your Honor.

THE COURT: Members of the Jury, I wish to say now that I wish to commend you for your time and attention that you gave to this matter, an important matter as I said. I think you've acted in the highest standards and concepts of jury service in this District and my appreciation of the jury system has always been enhanced by the actions of jurors, such as Jurors as yourselves. I'm not going to comment on the verdict in any manner, shape or form. I'm commending you for your very difficult duty, as which I say you played a most active role in the administration of justice according to law.

So, you have my personal thanks and the thanks of the court and I hope that you will not be incon-

2 venienced in trying to get home at this late hour.
3 I bid you good night. The Jury is excused for further
4 service.

5 (Whereupon, the Jury was excused at 3:30 p.m.)

6 THE COURT: Now, would you like to reserve your
7 motions?

8 MR. CORBETT: I would like to reserve them until
9 the time of sentence, Judge.

10 THE COURT: All right.

11 MR. CORBETT: I've discussed it with the United
12 States Attorney, the question of bail for Mr. Branick
13 and he has no objection to bail, same bail conditions.

14 MS. SOLLEDER: I haven't discussed it with Mr.
15 Weinbach but I assume --

16 MR. WEINBACH: The Government will have no
17 objection to bail being continued.

18 THE COURT: Bail continued. Now, there is no
19 probation officer present at this hour, but I will of
20 course require the preparation of a pre-sentence report.
21 In the event you have not in the interim made any
22 motions which the Court will entertain, you understand --

23 MS. SOLLEDER: Your Honor, is it necessary to
24 make written motions?

25 THE COURT: No. You're not prohibited from doing

2 so or submitting memorandums or anything else if you
3 feel that it is indicated.

4 I'm reserving your right and your time which
5 would ordinarily be seven days until a date will be
6 fixed for the imposition of sentence.

7 MS. SOLLEDER: I see, your Honor.

8 THE COURT: I might say that of course when the
9 pre-sentence reports are prepared here it usually takes
10 from four to six weeks. I assume one or both of the
11 defendants will be out of town and it might be more
12 convenient if they remained overnight and took care of
13 that matter tomorrow.

14 MR. CORBETT: I was going to suggest that.

15 THE COURT: They can come down to the Probation
16 Department tomorrow. I'm sure it can be arranged.
17 Then of course when the report is finished there will
18 be ample time and opportunity to review it before the
19 date of sentence and so forth.

20 MS. SOLLEDER: Yes, your Honor.

21 THE COURT: I bid you all good night.

22 (Whereupon, these proceedings were concluded.)

23

24

25

1. STATEMENT OF GENERAL POLICY AS TO FUNCTIONS AND PROCEDURES
OF THE PRETRIAL SERVICES AGENCY FOR THE UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF NEW YORK

18 USC 3151

Ch's
Ex 2

1:1 Functions The Pretrial Services Agency of this Court shall perform the following functions:

- (A) Collect, verify and report promptly to the district judge or magistrate information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions;
- (B) Review and modify the reports and recommendations made in (A) above for persons seeking release pursuant to 18 USC 3145(e) or 18 USC 3147;
- (C) Supervise persons released into its custody by a Judge, Magistrate or other Judicial officer;
- (D) With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of appropriate facilities for the custody or care of persons released under Chapter 207 of Title 18 of the United States Code, including, but not limited to, residential halfway houses, addict and alcoholic treatment centers and counseling services;
- (E) Inform the Court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions;
- (F) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under Chapter 207 of Title 18 of the United States Code and advise the Court as to the eligibility, availability and capacity of such agencies;
- (G) Assist persons released on bond in securing any necessary employment, medical, legal, or social services;
- (H) Prepare, in cooperation with the United States Marshal and the United States Attorney, such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;
- (I) Notify each person released on bond of all scheduled appearances in this Court; and
- (J) Perform such other functions as the Court may assign from time to time.

1:2 Notification of Arrest and Filing of a Case

- (A) The Pretrial Services Agency and the Office of the United States Attorney shall make arrangements so that the Pretrial Services Agency shall receive prompt notification of the arrest of a defendant, the name of the defendant, the charge upon which the defendant has been arrested, and the place wherein the defendant is being detained.
- (B) The Magistrates shall cause a copy of each complaint filed before them to be forwarded to the Pretrial Services Agency immediately following the filing of the

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complaint, provided that if the complaint is sealed, they shall cause the copy to be forwarded immediately after the unsealing of the complaint. The Clerk of the Court shall cause a copy of each indictment or information filed, to be forwarded to the Pretrial Services Agency immediately following the filing, provided that if the indictment is sealed, he shall cause the copy to be forwarded immediately after the unsealing of the indictment.

1:3 Pretrial Services Agency Interview with Defendants

Whenever the Pretrial Services Agency is notified of the arrest of a defendant, arrangements shall be made in cooperation with the Office of the United States Attorney, for a Pretrial Services Officer to conduct a timely and adequate interview with the defendant.

1:4 Participation of the Defendant in the Pretrial Services Program

In the interview with a defendant, the Pretrial Services Officer shall (a) explain the functions of the Pretrial Services Agency, (b) advise the defendant not to discuss the facts of his or her case during such interview, (c) obtain from the defendant the information necessary for the effective performance of the function of the Pretrial Services Agency as set forth in Title II of the Speedy Trial Act of 1974, as amended, and (d) secure a written agreement to be processed within the program of the Pretrial Services Agency where a defendant agrees voluntarily to be so processed.

1:5 Participation Orders

If the defendant declines or otherwise fails to agree to be a part of the program or to give the information necessary for the effective performance of the Agency's function, the Pretrial Services Officer shall forthwith report this to the appropriate judicial officer. If the judicial officer determines that the defendant should be included in the program established by the Pretrial Services Agency, an order of participation shall set out the reasons therefore and the conditions of such participation.

1:6 Review of the Bond Set by the Magistrate

The defendant, the United States, or the Pretrial Services Agency may petition the appropriate district judge for a review of any order establishing the conditions of pretrial bail, release or confinement entered by a magistrate.

CT'S EX. 2

2. REGULATIONS ESTABLISHING POLICY ON THE RELEASE OF AGENCY FILES

The following regulations shall govern the release of information obtained by a Pretrial Services Officer in the performance of his (her) duties. Such information includes that contained in the Pretrial Service Agency's files, in the Agency's reports, and those facts which may become known to a Pretrial Services Officer in the course of a pretrial service investigation.

- 2:1 A pretrial services officer shall record only information pertinent to the determination of bail and shall not record, or indicate in any form, any information related to an alleged offense (s).
- 2:2 Pretrial services agency information, unless independently obtained, shall not be admissible on the issue of guilt in any judicial proceeding, state or federal, except where specifically authorized by these regulations.
- 2:3 Pretrial services officers, agency files, or reports, shall not be subject to subpoena or any other form of judicial process in any federal or state judicial proceeding, except as is consistent with the following regulations regarding release of such information.
- 2:4 Information, as defined above, shall be available to the appropriate judicial officer for the purpose of bail determination.
- 2:5 Information, as defined above, shall be available to members of the agency staff and to qualified persons for the purpose of research related to the administration of justice:
- (A) The anonymity of the individuals to whom such information relates shall be preserved:
 - (B) Those persons who receive information under this provision shall be required to complete a nondisclosure agreement, guaranteeing the confidentiality of the information in their possession.
- 2:6 Information, as defined above, shall be available to agencies under contract to provide appropriate facilities for the custody or care of persons released pursuant to §3154: (In their respective districts the Board of Trustees or the Division of Probation will be responsible for contracting with such agencies) 18 U.S.C. §3154 (4)).
- (A) Those persons who receive such information shall be required to complete a non-disclosure agreement, guaranteeing the confidentiality of the information in their possession;

- (B) Neither these contract agencies nor their personnel shall be subject to subpoena in regard to information obtained from pretrial services agents regarding any individual.

- 2:7 Following a finding or plea of guilty in a criminal prosecution, information, as defined above, may be made available to United States Probation Officers provided that the defendant authorizes the release of the information, in writing, upon advice of counsel.
- 2:8 Information, as defined above, but only to the extent that it details a defendant's whereabouts and is unidentified as to source, shall be released in the following limited situations to law enforcement agencies for law enforcement purposes:
- (A) To investigate a defendant's failure to appear in court;
 - (B) To investigate alleged violation (s) of release conditions.
- 2:9 The information, as defined above, shall be available to law enforcement agencies and admissible as evidence on the issue of a defendant's guilt in prosecution for an offense allegedly committed in the course of obtaining pretrial release.
- 2:10 Before determining the conditions for pretrial release, the court shall upon request permit the defendant or his counsel, if he is so represented, to read the pretrial services report exclusive of any recommendation as to release or conditions thereof, but not to the extent that in the opinion of the court the report contains information which, if disclosed, would violate a promise of confidentiality by which it was obtained or information which is disclosed might result in harm, physical or otherwise, to the defendant or other persons.
- 2:11 The information, as defined above, shall not be available for the purpose of impeaching a defendant's credibility in the course of any proceedings pertaining to pending charges, nor in any subsequent proceedings arising out of other charges.
- 2:12 Information, as defined above, shall not be available to or admissible in evidence on behalf of a third-party or a co-defendant for any purpose, including the exoneration of a co-defendant.

UNITED STATES GOVERNMENT

Memorandum

Ex 3.
offered

TO : Magistrate Vincent Catoggio

DATE: April 21, 1976

FROM : Michalah Bracken, Pretrial Services Officer

SUBJECT: Jeff Coale Pierce, defendant

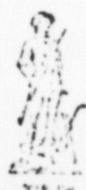
On April 5, 1976, Jeff Pierce was arraigned for importation of hashish oil, title 21 USC 960. He was given a \$5,000 Personal Recognizance Bond and placed under the supervision of the Pretrial Services Office in Central California with the conditions that he live with his parents in Arroyo Grande, California and contact the Pretrial Services Agency Office twice a week.

To date, Mr. Pierce has not contacted the PSA Office in California as he agreed to do and, when his parents were contacted, they reported that they were not certain of Jeff's whereabouts.

We are bringing this matter to your Honor's attention for whatever action you feel it is appropriate to take.

Thank you for your cooperation.

Michalah Bracken
Pretrial Services Officer



CT's Ex. 3

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

G

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

BRADLEY BRANNICK and BARBARA TIRA,

Defendants-Appellants

Docket No. 76 Cr. 1976

AFFIRMATION OF
SERVICE

HELENA PICHEL SOLLEDER, an attorney at law, affirms the following under the penalty of perjury:

I am not a party to this action; I am over 18 years of age; I reside at 19 Rector Street, N.Y.

On the 22nd day of December, 1976 I served the within Brief and Appendix for appellant Tira on Elia Weinbach, Esq. Assistant U.S. Attorney for the Eastern District of New York, at 222 Cadman Plaza East, Brooklyn, New York, the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: December 22, 1976


HELENA PICHEL SOLLEDER